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Supreme Court, U.S.
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No. 03-293

In The Supreme Court of the United States

LCT TRANSPORTATION SERVICES, INC.,
a/k/a LESTER COGGINS TRUCKING, INC.,
a Florida corporation,

Petitioner,

v.

VICTOR BARRAGAN, JORGE TORRES, ROBERTO CAIAFFA, and ERVING G. PEÑA, Florida citizens,

Respondents.

On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Eleventh Circuit

BRIEF IN OPPOSITION

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QUESTIONS PRESENTED

I. Whether a fact-driven question about attorneys' fees amount awarded to the prevailing party and affirmed per curiam by the Eleventh Circuit provides the basis for certiorari jurisdiction?

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STATEMENT OF THE CASE

The appeal before the Eleventh Circuit was an appeal from the district court's final order adopting the magistrate judge's amended report and recommendation on Plaintiffs' verified motion for attorneys' fees and costs pursuant to The Fair Labor Standards Act, 29 U.S.C. § 216(b) (the "FLSA"). The case was filed by present and former employees of Petitioner, Lester Coggins Trucking, Inc. a/k/a LCT Transportation Services, Inc. against their employer, for damages arising from Petitioner's failure to pay overtime at federally prescribed rates – namely, Petitioner's failure to pay overtime at 1½ times the employees' regular rate of pay for each hour worked in excess of 40 per week.

Final Judgment was entered in favor of all of Plaintiffs except Juan Rodriguez and against Petitioner on January 9, 2002. Plaintiffs received an excellent result in this case and succeeded in their main goal which constituted the basis of this lawsuit. All five Plaintiffs succeeded in the loader exemption claim, the central issue in the case. Four of the five Plaintiffs in this case succeeded on the merits and received a finding that they were not exempt from the overtime provisions and were awarded their backpay.

As the prevailing party in the FLSA action, the district court held that Plaintiffs are entitled to an award of their reasonable attorneys' fees and all costs of the litigation. The FLSA specifically mandates that in an action for unpaid overtime compensation, "the Court *shall*, in addition to any judgment awarded to the Plaintiffs, allow a reasonable attorneys' fee to be paid by the defendant

[employer] and costs of the action." 29 U.S.C. § 216(b) (emphasis added).

On January 18, 2002, Plaintiffs, as the prevailing party pursuant to 29 U.S.C. § 216(b), filed a verified motion for attorneys' fees and costs requesting $203,104.50 in attorneys' fees and $40,874.71 in costs. Plaintiffs exercised billing judgment by voluntarily removing over $103,000.00 of attorneys' fees from their fee request prior to its filing.

On July 3, 2002, the Magistrate Judge issued an Amended Report and Recommendation that Plaintiffs' verified motion for attorneys' fees and costs be granted in part and denied in part and awarded Plaintiffs attorneys' fees in the amount of $146,152.29 and costs in the amount of $12,164.29. Specifically, the Magistrate Judge recommended that the total amount of hours that Plaintiffs sought to be awarded be reduced by 20%. Furthermore, the Magistrate Judge reduced Ms. Hector's (lead counsel) hourly rate from $350.00 to $300.00 per hour. In addition, the Magistrate Judge did not recommend any award for attorneys' fees or costs associated with preparing the verified motion for attorneys' fees and costs. On September 6, 2002, the district court entered an order adopting the amended report and recommendation. Plaintiffs appealed the district court's September 6, 2002 order adopting the report and recommendation, claiming that the district court abused its discretion by not awarding Plaintiffs, the prevailing party, all of their fees and costs that they requested pursuant to 29 U.S.C. § 216(b) in their verified motion for attorneys' fees and costs after they had already removed a substantial portion of their attorneys' fees prior to filing the motion. Petitioner also appealed the district court's September 6, 2002 order adopting the report and

recommendation asserting that the award of attorneys' fees awarded to plaintiff should be further reduced.

The Eleventh Circuit Court of Appeals affirmed the district court's September 6, 2002 order, ***per curiam***, and did not issue a written opinion. Nevertheless, Petitioner has filed its petition based on the Eleventh Circuit's per curiam affirmation of the district's court's order.

WHY CERTIORARI SHOULD NOT BE GRANTED

Rule 10 of the Rules of the Supreme Court states that "a petition for writ of certiorari will be granted only for compelling reasons." There are no such compelling reasons present here. Rule 10 of the Rules of the Supreme Court provides the character of reasons the Court will consider in granting or denying petitions for writ of certiorari. These reasons include situations where a decision of a circuit court of appeals conflicts with another circuit court of appeals on the same important matter; a circuit court of appeals has decided an important federal question in a manner that conflicts with a decision of a court of last resort; or where a circuit court of appeals has so departed from the accepted and usual course of judicial proceedings that this Court's supervisory power is required. The Court may also grant a petition for writ of certiorari where a United States court of appeals has decided an important question of federal law that has not been, but should be, settled by this Court or has decided an important federal question in a way that conflicts with relevant decisions of this Court. Moreover, Rule 10 states that "[a] petition for writ of certiorari is rarely granted when the asserted error

consists of erroneous factual findings or the misapplication of a properly stated rule of law."

Based upon the above criteria, the Court does not have a basis to grant discretionary review. The Court should "be consistent in not granting the writ of certiorari except in cases involving principles the settlement of which is of importance to the public, as distinguished from that of the parties, and in cases where there is a real and embarrassing conflict of opinion and authority between the Circuit Courts of Appeals." *Layne & Bowler Corp. v. Western Wells Works*, 261 U.S. 387 (1923).

I.

The Eleventh Circuit Per Curiam Decision is neither in Direct Conflict With a Decision of this Court nor Creates a Conflict Among the Circuits.

This case presents nothing but a routine squabble over attorneys' fees, and a ***per curiam*** affirmance. There is no "conflict" with anything. This Court and other circuits have held that an award of attorneys' fees should be proportionate with the degree of a prevailing party's success and shall bear a reasonable relationship to the results obtained. *See Hensley v. Eckerhart*, 461 U.S. 424, 434 (1983); *Jean v. Nelson*, 863 F.2d 759, 771 (11th Cir. 1988). Moreover, "[i]n cases where plaintiff's claims for relief will involve a common core of facts or will be based on related legal theories, much of counsel's time will be devoted generally to the litigation as a whole, making it difficult to divide the hours expended on a claim-by-claim basis." *Id.*

Applying an abuse of discretion standard, the Eleventh Circuit affirmed, ***per curiam***, the district court's

order adopting the magistrate judge's award of attorneys' fees to Plaintiffs and cited 11th Cir. R. 36-1[1]. Thus the Eleventh Circuit's ***per curium*** opinion supports that the district court did not abuse its discretion and that the district court's award of attorneys' fees bore a reasonable relationship to the results obtained. This fact-driven decision does not conflict with any legal principle in any decision of this Court or with any Circuit Court decision.

In this case, Plaintiffs' counsel achieved an excellent result for Plaintiffs as Plaintiffs received a jury verdict that Plaintiffs are not exempt from the overtime provisions of the FLSA and are otherwise entitled to overtime at a rate of one and a half (1½) times the regular rate of pay. The success of the Plaintiffs not only benefited them, but also benefited the other warehouse workers employed by Petitioner who are now being afforded overtime at a rate of 1½ times their regular rate of pay.

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[1] 11th Cir. R. 36-1 provides:

When the court determines that any of the following circumstances exist:

(a) the judgment of the district court is based on findings of fact that are not clearly erroneous;

(b) the evidence in support of a jury verdict is sufficient;

(c) the order of an administrative agency is supported by substantial evidence on the record as a whole;

(d) a summary judgment, directed verdict, or judgment on the pleadings is supported by the record;

(e) the judgment has been entered without a reversible error of law;

and an opinion would have no precedential value, the judgment or order may be affirmed or enforced without opinion.

Furthermore, all of Plaintiffs' claims for relief involved a common core of facts, and thus such a lawsuit cannot be viewed as a series of discrete claims. Where a plaintiff's unsuccessful claims are part of "one bundle of proof" with the successful one, plaintiff's attorney is entitled to be fully compensated for the excellent result he obtained. *See Jean*, 863 F.2d at 771; *Robinson v. City of Edmond*, 160 F.3d 1275, 1283 (10th Cir. 1983); *Villano v. City of Boynton Beach*, 254 F.3d 1302 (11th Cir. 2001). The time set forth in Plaintiffs' fee request that included time for Plaintiff Juan Rodriguez were those entries that were part of the "same common core of facts" and "legal theories" upon which the other four Plaintiffs prevailed. Accordingly, when plaintiffs prevail principally on the majority of their interrelated claims in their lawsuit, as Plaintiffs have done here, lack of success on some of those interrelated claims which involve a common core of facts and closely linked legal theories may not be used as a basis for reducing the fee award. *See Jean*, 863 F.2d at 771; *Robinson*, 160 F.3d at 1283.

Moreover, the obligation to pay attorneys' fees shifts to the defendant to enable indigent parties, like the Plaintiffs here, the ability to obtain legal assistance in seeking redress for violations of the FLSA allowing the court to award attorneys' fees in excess of the amount of the judgment. *See id.*; *see also Soler v. G & U, Inc.*, 801 F. Supp. 1056, 1067 (S.D.N.Y. 1992) (the legal services corporation, which represented workers in their FLSA litigation, was entitled to award of $238,208.08 for its attorneys who had expended considerable time on behalf of the workers and ultimately secured judgment in their favor); *Thompson v. Kennickell*, 710 F. Supp. 1, 9 (D.D.C. 1989)

(awarding successful plaintiff's counsel $1,732,700.00 in legal fees for employer's violation of 29 U.S.C. § 216).

The district court's decision was consistent with federal court cases that have refused to adopt a proportionality requirement in statutory attorneys' fees shifting cases. *See Duckworth v. Whisenant*, 97 F.3d 1393, 1397 (11th Cir. 1996) (recognizing that the law does not permit attorneys' fees award in civil rights cases to be in pure proportion to amount recovered and affirming award of $162,209.00 in attorneys' fees on $500.00 damage award); *Cobb v. Miller*, 818 F.2d 1227, 1235 (5th Cir. 1987) (reviewing statutory fee shifting cases and finding that courts decline to adopt a rule of proportionality between damages and attorneys' fees); citing *City of Riverside v. Rivera*, 477 U.S. 562, (1986) (affirming attorneys' fees award of $245,456.25 on §1983 and §1988 action where plaintiff recovered $33,350.00 in damages); *Bonnette v. California Health and Welfare Agency*, 704 F.2d 1465 (9th Cir. 1993) (finding no abuse of discretion in awarding $100,000.00 in attorneys' fees on FLSA claim where plaintiffs recovered $18,445.00 in damages considering the substantive result obtained as well as the monetary recovery); *Copeland v. Marshall*, 641 F.2d 880, 891 (1980) (affirming attorneys' fees award of $160,000.00 in Title VII action where plaintiff recovered $33,000.00 in damages); *Soler v. G & U, Inc.*, 801 F. Supp. 1056 (S.D.N.Y. 1992) (awarding $238,208.08 in attorneys' fees on FLSA claim where worker plaintiffs' recovered $37,731.74 in damages). The Eleventh Circuit's decision clearly does not create a conflict among the circuits or with this Court. Petitioner is impermissibly attempting to have this Court review what Petitioner believes to be erroneous factual findings or a misapplication of a properly stated rule of law. *See* Rule 10 of the

Rules of the Supreme Court; *Brennar v. Manson*, 383 U.S. 519 (1966).

II.

The Case Does Not Present an Issue of Nationwide Importance.

Petitioner's claim that this issue regarding amounts of attorneys' fees awards is one of nationwide importance is tenuous at best. Petitioner supports its position that this issue is of nationwide importance by citing to a Wall Street Journal Article that claims that FLSA litigation is on the rise. In addition, Petitioner claims that some courts have expressed frustration with the *Hensley* test. However, these two reasons do not make the amount of attorneys' fees awards an issue of nationwide importance. Indeed, this Court has already determined the issue of attorneys' fees awards in fee shifting cases in *Hensley v. Eckerhart*, 461 U.S. 424, 434 (1983). No more of this Court's time, resources and energy should be expended in entertaining this issue.

CONCLUSION

For the foregoing reasons, Respondents respectfully request that this Honorable Court deny the Petition for Writ of Certiorari.

Respectfully submitted,

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